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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Iraq

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Iraq prepared by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with paragraph 14 of Commission resolution 1993/74 of 10 March 1993 and Economic and Social Council decision 1993/279 of 28 July 1993.

ANNEX

Interim report on the situation of human rights in Iraq prepared by Mr. Max van der Stoel, Special Rapporteur

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I. INTRODUCTION

. In accordance with paragraph 14 of Commission on Human Rights resolution 1993/74 of 10 March 1993, as approved by Economic and Social Council decision 1993/279 of 28 July 1993, the present report constitutes the interim report of the Special Rapporteur on the situation of human rights in Iraq. A final report will be submitted to the Commission at its fiftieth session.

. While the Special Rapporteur continues to study the situation of human rights in general and throughout the country, special and urgent matters affecting persons in certain territories, and affecting certain rights, cause the Special Rapporteur once again to focus his attention in his interim report on the situation in the southern marsh area of Iraq and on the enjoyment of economic rights in Iraq. Indeed, the fact that the Special Rapporteur finds it necessary to address in this report precisely the same subjects he addressed in his interim report to the General Assembly at its forty-seventh session (A/47/367 and Add.1) may be viewed as disturbing in itself. However, as detailed below, the Special Rapporteur views with consternation the evidence that the situation in the southern marsh area in particular and the enjoyment of economic rights in general have further deteriorated. Of course, while the Special Rapporteur will focus on these two concerns in the present report, it still must be observed that there are no signs of improvement in the general situation of civil and political rights in Iraq.

. In carrying out his mandate, the Special Rapporteur has examined a wide range of information pertaining to general and specific allegations submitted through testimony and in documentary form, including script and audio and video recordings. In analysing this information, supplemental information has been sought from various sources including scientific institutes. However, direct access to locations within or near Iraq has remained problematic owing to the Government of Iraq's absence of reply to requests for a visit and owing to considerable constraints upon the resources available to the Special Rapporteur.

. Upon the acceptance by the Commission on Human Rights of the Special Rapporteur's recommendation that human rights monitors be sent "to such locations as would facilitate improved information flows and assessment and would help in the independent verification of reports on the situation of human rights in Iraq" (resolution 1993/74, para. 11), and as requested by the Commission in the same paragraph, the Special Rapporteur met with the Secretary-General in New York on 4 May 1993 in order to discuss the means through which such monitors could be promptly put in place once the Economic and Social Council would have approved the Commission's resolution. The Secretary-General promised to do his best in this regard, but pointed at the same time to the scarcity of resources given in response to the other demands on the United Nations including those made by the increasing number of other mandates created by the Commission on Human Rights.

. On 28 July 1993, the Economic and Social Council approved Commission on Human Rights resolution 1993/74. This decision coincided with the Special Rapporteur's receipt of information concerning the arrival in south-western Iran of thousands of Iraqi refugees who were said to be fleeing repression in the southern marsh area of Iraq. Responding to this information, which offered an

important opportunity to interview large numbers of alleged victims of recent (and past) human rights violations, the Special Rapporteur requested authorization for an immediate mission to southern Iran. Unfortunately, the Special Rapporteur's request was refused on the grounds of a lack of financial resources and security considerations. The Special Rapporteur therefore appealed directly to the Secretary-General, who was able to make available additional financial resources to the Centre for Human Rights of the Secretariat for this purpose. Thus, one month after his original request, a mission of two staff members of the Centre for Human Rights, serving in the capacity of human rights monitors and accompanied by two United Nations interpreters, was sent to the area on 27 August 1993 in order to receive testimony from some of the 5,000 refugees who had then congregated along the edges of a dirt dyke running in the middle of the Iranian marshes along the Iraq-Iran frontier. The cooperation of the Government of the Islamic Republic of Iran was appreciated in permitting the mission to take place.

. In order to review the evidence obtained by the human rights monitors during their five-day mission to Iran, the Special Rapporteur visited Geneva on 23 and 24 September. While in Geneva, he received additional testimonies and consulted with other persons of interest.

. In his continuing efforts to increase the information available to him and to investigate allegations he has received, the Special Rapporteur travelled on 8 and 9 October to London, where he met with a wide range of persons and received supplementary information in documentary, photographic and video form. Additional information, including testimonial evidence, has since been received by the Special Rapporteur in The Hague.

. In an effort to obtain direct access to the locations where violations are alleged to have occurred, and are alleged to be still occurring, the Special Rapporteur has repeated his request to the Government of Iraq for a visit to the country. On 30 September 1993, the Special Rapporteur addressed the following letter to the Minister for Foreign Affairs of the Republic of Iraq:

> "I have the honour to refer to Commission on Human Rights resolution 1993/74 of 10 March 1993 by which my mandate as Special Rapporteur on the situation of human rights in Iraq was extended for a third year. For your convenience, please find herewith a copy of Commission resolution 1993/74. As you may know, at its most recent session in July 1993 the Economic and Social Council approved Commission resolution 1993/74 which, inter alia, envisages my visit to all parts of your country including the northern area. Consequently, I hereby request the cooperation of your Government in facilitating such a visit.
>
> "By this correspondence, I should also like to express my grave concern over reports and specific allegations of serious human rights violations which I have received in recent weeks pertaining especially to the southern marsh area of your country. In particular, it has been alleged that there has been, and continues to be, a displacement of thousands of marsh area dwellers from their traditional habitat due to the draining of the marshes combined with the pollution of remaining waters such that the inhabitants are without sufficient food or potable water. In addition, I have received detailed allegations of widespread and

indiscriminate bombardments of civilian communities within the marsh area which, coupled with allegations of arbitrary arrests and detentions, have caused many people to flee for safety and fear of persecution. Consequently, in order to enable me to benefit from an examination of the reported situation in situ, I would consider it most desirable to visit the areas where these events are said to be occurring.

"As I continue to study the situation of human rights in Iraq, I am of course aware of the Government of Iraq's submissions to United Nations human rights and related forums. However, in endeavouring to accord full consideration to your Government's views, I should like to reiterate that I continue to hold myself at your disposal for continuation of the dialogue on which we embarked in 1991. To this end, I would welcome your Government's reply to this correspondence at its earliest convenience."

In the light of subsequent reports of a most alarming nature (see below), the Special Rapporteur addressed a second letter, dated 28 October 1993, to the Minister for Foreign Affairs of the Republic of Iraq:

"I have the honour to refer to my letter of 30 September addressed to Your Excellency concerning my mandate under Commission on Human Rights resolution 1993/74 of 10 March 1993. By that correspondence, I expressed my grave concern over reports and specific allegations of serious human rights violations relating especially to the southern marsh area of your country. In addition, I requested your Government's cooperation in facilitating my visit to your country as envisaged by Commission resolution 1993/74.

"In the light of continuing reports of serious human rights violations said to have recently occurred in the southern marsh area of Iraq, I hereby reiterate my request for a visit to Iraq, especially the southern marsh area. Moreover, given the alarming nature of the reports received, I would particularly appreciate an early response to this request."

. As the Special Rapporteur awaits the response of the Government of Iraq to his requests for a visit to the country, and as he awaits the allocation of sufficient resources to enable even a minimal implementation of paragraph 11 of Commission on Human Rights resolution 1993/74 concerning human rights monitors, the Special Rapporteur continues to study the general situation of human rights in Iraq. His final report to the Commission will again address the breadth of human rights obligations carried by the Government of Iraq. In the meantime, the present report, addressing the situation in the southern marsh area and the situation of economic rights, reflects information at the disposal of the Special Rapporteur through 4 November 1993.

II. THE SITUATION IN THE SOUTHERN MARSH AREA

A. Introduction

. The Special Rapporteur has previously addressed the situation in the southern marsh area of Iraq in his reports to the General Assembly at its forty-seventh session (A/47/367, paras. 7-16 and 28; and A/47/367/Add.1, paras. 15-23, 34-35, 45, 53 (e) and 56) and to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/45, paras. 114-130). His initial alarm related to reports of military attacks on civilian settlements, forced relocation of the indigenous tribal people, the imposition of an effective internal economic blockade, and an enormous water diversion project that threatened the environment through the drainage and destruction of the marshes. In his interim report, which in his opinion merited a special and early submission to the General Assembly in August 1992, the Special Rapporteur called for immediate steps to be taken "before too much irreparable damage is done and too many individuals are victimized" (A/47/367, para. 4). More specifically, the Special Rapporteur called upon the Government of Iraq to cease its repressive activities, especially the military attacks then being made against its civilian population, and called for the water diversion project to be stopped pending an independent and comprehensive environmental assessment, and for a team of human rights monitors to be sent immediately to the region. In relation to the latter recommendation, the Special Rapporteur developed in some detail his idea for the sending of human rights monitors to Iraq (ibid., paras. 17-26).

. In part two of his interim report submitted to the General Assembly in November 1992 (A/47/367/Add.1), the Special Rapporteur focused on the specific problems relating to the economic and social rights of the Marsh Arabs. While he fully understood that the military actions still being conducted against the people at that time constituted an immediate threat to their persons, he chose to address the particular effects of Government policies infringing upon the people's access to basic foodstuffs and health care and to address the overarching effect of the water diversion projects which threatened to destroy the traditional lifestyle of these tribal peoples. In connection with the unique lifestyle of the Marsh Arabs, attention was drawn to the Government of Iraq's obligations under article 27 of the International Covenant on Civil and Political Rights concerning minority protection, and under International Labour Organization (ILO) Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, to which Iraq is a party.

. In his last report to the Commission on Human Rights in February 1993 (E/CN.4/1993/45), the Special Rapporteur brought to light the existence of a document found in an Iraqi security office in northern Iraq in March 1991 entitled "Plan of Action for the Marshes", detailing a programme of what would constitute serious human rights violations against the people of the region. This document, viewed in the light of the continual receipt of disturbing allegations of serious human rights violations corroborated by other testimonial and documentary evidence in the form of photographic and video recordings, was reproduced in full in the report of February 1993 (ibid., annex I, document No. 18). The specific violations which were addressed by the Special Rapporteur concerned the civil rights to life and security of person, including due process of law, the economic rights to food and health care, and the social and cultural

rights relating to the maintenance of the Marsh Arab community which is so integrally linked to the protection of the marsh environment in which they live. The Special Rapporteur concluded that the Government of Iraq was responsible for serious violations of the human rights of the Marsh Arab people and he reiterated again his call for the sending of human rights monitors to the country, including the southern marsh area.

B. Violations of civil rights

. Allegations received by the Special Rapporteur concern serious and widespread violations of almost all civil rights. In particular, there are persistent allegations of violations of: the rights to life, liberty and security of person; the freedoms from arbitrary arrest, detention, and torture or cruel, inhuman or degrading treatment or punishment, together with the right to due process of law; and freedom of movement. According to reports and testimonies received, these allegations relate especially to three governmental tactics: (a) indiscriminate bombardment of civilian settlements and arbitrary killings; (b) arbitrary arrest and detention of suspected "criminals", "deserters" and "infiltrators"; and (c) forced displacement. In fact, in relation to the basic thrust of these allegations, the Government of Iraq has acknowledged that it has been conducting significant military activity "of one kind or another" in the region which it has consistently justified as a police action based on the "duty to eliminate the intimidation and criminality that find a safe refuge in the difficult terrain of the marshes" (see letter dated 9 September 1993 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General (A/48/387-S/26424, annex)).

1. Bombardment of civilian settlements and arbitrary killings

. While the Special Rapporteur has received reports and specific allegations of summary and arbitrary executions within the marsh area, the most consistent violation of the right to life is said to stem from the continuing bombardment of civilian settlements resulting in the death of large numbers of innocent persons, including women, children and the elderly. Despite the imposition at the end of August 1992 of a "no-fly zone" against Iraqi Government aircraft flying south of the thirty-second parallel, allegations indicate continuing [redacted] and even intensifying [redacted] assaults by means of ground-to-ground artillery.

. Reports of artillery bombardment of civilian settlements have been received by the Special Rapporteur on an intermittent basis since he was first appointed in June 1991. He now has lists of allegedly destroyed villages and tribal settlements numbering almost 200 and located in many parts of the vast marsh area. However, there was a noticeable increase in the receipt of allegations of bombardments in the recent summer months, indicating an intensification of the military campaign. In fact, as described below, the increase in the number of these allegations coincides with the receipt of allegations that extensive areas of the marshes had become dry and were thus more susceptible to the movement of heavy equipment including artillery pieces and tanks. Reports state that this was the case.

. Aside from the regular receïpt of allegations through second and third parties concerning bombardments ïn the region, the Special Rapporteur received numerous and consistent testimonïes from refugees who arrived in south-western Iran in July and August 1993. Numbering in the thousands, these persons claimed almost universally to have been subjected to indiscriminate bombardments, both many months ago and in the recent past. They alleged that, while many persons had become somewhat used to bombardments dating to the early years of the Iran-Iraq war (when army deserters were said to have first taken refuge in the marshes in large numbers), the bombardments against their communities had recommenced after the March 1991 uprisings and had increased during the summer of 1993 as the marshes dried and the military forces could gain better access to Marsh Arab settlements.

. As a general matter, refugee testimonies consistently stated that bombardments could take place at any time of the day or night, without any warning, but often occurred during mealtimes or at night when most people would be at home. Sometimes the passing of military patrols (on land or by boat) would precede bombardments, leaving the victims to believe that they had been knowingly and specifically targeted.

. Specific allegations from refugees who claimed to be eyewitnesses or victims include events said to have occurred in 1992 and 1993. With respect to the former, testimonies were received from survivors of an attack alleged to have taken place on 23 May 1992 in the village of Al-Agar in the central Amara Marshes. The testimonies were received from members of families who at the time of the attack were conducting a wedding ceremony. Many other villagers were said to be present at the open-air event. According to the very specific and virtually identical testimonies, a helicopter flew over the village, circled two or three times above the assembly and then fired two rockets directly at the people. Between 20 and 30 people were said to have been killed, including the groom and his mother, while tens more were injured. Among the survivors interviewed were: a young man who had lost his left arm, his father, uncle and aunt; a young man whose sister and uncle were killed; and an injured little girl who lost her father and aunt. Aside from the terrible nature of this alleged attack, the Special Rapporteur draws particular attention to this allegation because the convincing testimonies corroborate specific reports that the Special Rapporteur had received from second-hand sources in 1992 concerning the same incident.

. An example of a testimony recounting a bombardment of civilian settlements in recent months is that said to have occurred towards the end of June 1993 in the Al-Hammar Marshes close to the apparently now dry area of Al-Sulaymiyyah. During the course of a four-day bombardment, armoured vehicles and tanks were said to have begun shelling from a distance before sweeping into the area and razing the houses. As a different example, another witness claimed that his reed house had been burnt down four times between 1983 and the summer of 1993: artillery (or helicopters, prior to the imposition of the "no-fly zone") allegedly shelled his village, destroying homes and setting fires. With no place really to go, the witness simply stated that he rebuilt his house each time; none of his family was killed, but neighbours were injured, including one little boy who was presented by the witness still carrying a piece of shrapnel lodged in his skull. When the marshes became dry and the bombardments intensified in the summer, the witness stated that he finally felt compelled to

flee. Several other witnesses stated that regular artillery bombardments caused the burning of many of the dry reed houses constructed by the Marsh Arabs. As a result of these bombardments, many witnesses carried physical wounds, including lost limbs. Many children had lost one or both parents: the recently arriving refugees had an especially high number of orphans among them. Almost all refugees demonstrated the psychological effects of the constant bombardments: one five-year-old boy among the refugees, said to be suffering from "shell-shock", stopped walking and speaking after an artillery attack in March/April 1993 near Al-Medaina.

. In the absence of the Government of Iraq's response to the Special Rapporteur's request to visit Iraq including the areas where the bombardments are said to have occurred, and in the absence of that Government's cooperation in accepting the stationing of human rights monitors or other independent parties in the region, the Special Rapporteur sougnt and received confirmation of the destruction of various villages by means of clear aerial and satellite photography. Videotapes submitted by non-governmental groups also contain impressive evidence of widespread destruction. Specifically, the videotapes in the possession of the Special Rapporteur show the complete destruction (alleged to have taken place in recent months) of what appear to be several small and large settlements, with animal carcasses strewn about, artillery craters visible on the dry land, scores of reed houses burnt to the ground, and many mashhoofs (the unique boats of the Marsh Arabs) splintered and sunken in the shallow waters. Aerial and satellite photography further indicates the existence and normal functioning of a marsh village in March 1993 and then its utter decimation some months later. Similarly, aerial and satellite photography corroborates reports and testimonies alleging fires caused by artillery bombardments directed both at villages and at the dried reed-beds upon and from which the settlements are built. Further corroborating evidence is found in the fact that, while refugees were being interviewed in Iran just four kilometres from the Iran-Iraq frontier at the end of August 1993, explosions could be heard in the far distance coming from the Iraqi side of the frontier [redacted] explosions said by the refugees to be attributable to Iraqi artillery.

. Perhaps the most alarming reports received by the Special Rapporteur relating to arbitrary bombardments allege the use of "chemical weapons" during attacks in the region of Um al-Ghag and the Abu Zergi marshlands near Basrah at the end of September 1993. These most disturbing allegations recount the observation of billowy "white smoke" resulting in the sudden death of several persons and animals, along with effects to the flora in the specific area. However, to date the Special Rapporteur has been unable to obtain corroborative evidence supporting these allegations.

. Apart from the allegations of indiscriminate bombardments of civilian settlements, the Special Rapporteur has also continued to receive allegations of other arbitrary killings and extrajudicial executions of persons either in the southern marsh area or taken from the area. Concerning the former, general reports have been received stating that all persons are at risk of arbitrary killing on the mere suspicion of being a "criminal" or "deserter", or of harbouring or assisting criminals or deserters. In this connection, the Special Rapporteur previously noted the existence of a Decree of the Revolution Command Council of 21 December 1992, which grants members of the Arab Baath Socialist Party and "popular patrols" impunity should they find it necessary to injure or

kill persons in the course of "conducting security and observation missions" (E/CN.4/1993/45, para. 181). However, perhaps more ominous than even this bold decree, it is to be observed that the social character and history of the Marsh Arab people has always been to offer humanitarian assistance (shelter and food) to passers-by and refugees ▮ actions which could easily be interpreted as "harbouring or assisting" unspecified "criminals", "deserters" or "infiltrators". Should such an interpretation be made, and there appears to be no rule of law impeding Baath Party members or other Government forces from making such arbitrary determinations, then virtually every person within the area would be at risk of death. Witnesses interviewed in south-western Iran allege that this kind of interpretation has been generally made. According to testimonies received, troops have entered villages after bombardments and burned down remaining houses with or without allowing the people time to leave. One witness, who admitted to being an Army deserter, recounted how the Army had come one day and set explosives to his house and then destroyed the whole village as punishment for his desertion. Witnesses uniformly affirmed that, should anyone resist these actions, they would be killed immediately. Another witness told how he watched a friend get shot in his house when the Army came one day and indiscriminately sprayed several houses of the "accused" village with bullets.

. With regard to extrajudicial executions, several witnesses stated, at first, that many people had been "executed". Upon further questioning, it very frequently turned out that persons had been forcibly arrested and had since disappeared: in the absence of further news, it was assumed that those arrested had been executed. In fact, almost no witnesses stated that they had seen executions (as opposed to arbitrary killings) take place in the marshes. More commonly, and in corroboration of reports received concerning executions said to have occurred north of the marshes, witnesses claimed that people had been taken to detention centres in the cities or as far away as the Radwaniyah and Abu Ghraib prisons in Baghdad. Some persons interviewed, claiming to have been victims of arbitrary arrest in the marsh area and then arbitrarily detained in city security centres or in the Baghdad prisons, gave accounts of extrajudicial executions in the detention centres.

2. Arbitrary arrest and detention, and due process of law

. Reports indicate that the people of the southern marsh area live in constant fear of arbitrary arrest and detention. It is further stated that in the course of arrest and detention persons are subjected to harsh treatment while denied access to virtually any form of judicial process. These reports have been corroborated through the convincing testimonies of numerous persons. As a result, there appears to be a widespread, if not universal, fear of governmental authorities in the region.

. Reports indicate that all forces of governmental administration are responsible for arbitrary arrests and detentions. Reports and testimonies received refer, with no particular emphasis, to various police forces: the Army, Military Intelligence, General Intelligence, Security and Special Security. Large numbers of security checkpoints are said to have been placed in and around the towns and cities of the region, and non-apparent temporary detention centres are said to have been established by Special Security forces in a variety of locales. Military patrols are said to move in and out of the

marsh areas effecting arrests of civilians when and as they feel inclined. While the general basis of arrest ostensibly resides in the accusation of "criminal", "deserter" or "infiltrator", a frequent basis of arrest, particularly of women, is said to be the accusation of "smuggler" stemming from civilian efforts to bring basic foodstuffs and medicines to their families, who have been cut off from other access because of official prohibition or requirements relating to official identification cards which Marsh Arabs generally do not possess.

. The matter of possession of valid identification cards, including monthly ration cards, places Marsh Arabs in a particularly vulnerable position because they typically have never had identification cards (owing to their unique lifestyle situation) or because valid ration cards have not been distributed to them. Consequently, persons accused of "smuggling" who are unable to prove their innocence immediately may be subjected to arrest and detention or may simply have their goods confiscated without legal process. It has been further reported that such arrests, detentions and simple confiscations have increased markedly as the waters in the marshes have decreased and as fish and animal stocks began to die as a result of the declining quantity and deteriorating quality of the water. It is to be noted that the offence of smuggling may result in the death penalty.

. Testimonies received from refugees arriving in south-western Iran during the summer of 1993 corroborated the allegations recounted above. In addition, witnesses stated that arrests were frequently effected during and immediately after bombardments of marsh settlements: Government forces would capture inhabitants trying to escape the shelling, while other troops would enter the villages and arrest survivors as the troops also set fire to reed-beds and remaining houses. The great majority of arrests, however, were said to occur in the towns and cities around the marsh area. Witnesses provided names of family members, friends and neighbours who had been arrested during the past year in the towns or cities. Refugees reported witnessing large-scale arrest campaigns also said to have occurred in the cities. For example, one witness reported observing the arrest of almost 100 persons in one part of the city of Basrah on 26 August 1993, apparently because those arrested could not present valid identification or military cards and were therefore suspected of being "deserters" or "criminals". Other refugees recounted observing similar arrest campaigns conducted by the Army and Security forces in areas of towns and cities that had been isolated for the purpose. Market areas were said to be especially vulnerable to such mass arrests when Army and Security forces would from time to time surround the markets and arrest the young men with or without checking their identification cards. Women, children and elderly persons were also said to have been taken from the markets. Specific accounts were given of widespread arrests in the cities of Amara and Basrah during the month of Muharram (Gregorian calendar: 20 June to 19 July 1993). In one case, four bus-loads of young men were said to have been arrested by Army and Security forces in the Hananiyah area of Basrah during the early morning of 7 Muharram (Gregorian date: 26 June 1993). Another report recounts how a restaurant owner and all his clientele present in the restaurant were arrested in Amara.

. Refugees also stated that in the course of flight they were particularly susceptible to arrest. Restrictions on free movement could add to the bases of accusations of "criminal" activity and thereby result in arrest and detention.

For example, testimonies were received from relatives concerning the arrest of a grandmother, mother and two babies in mid-July 1993 as they were travelling to a prearranged family meeting place east of the Tigris River from which the family was to flee to Iran. To avoid attention, the family moved in two groups: one group of four women with two babies, and another group of three men. However, Security forces were said to have stopped the group of women at a bus station in Al-Qurna, arresting two of them together with the babies. It was thought that the Security forces were suspicious of the fact that the women were carrying clothes and other personal belongings with them. The rest of the family successfully fled to Iran where they were interviewed; they believe that those arrested were taken to Basrah and eventually to Baghdad.

. The allegation that persons arrested are taken to the main cities and then transferred to detention centres and prisons in central Iraq, especially Baghdad, was frequently given in testimony. This testimony, including accounts from persons who said that they had themselves been arrested and transferred to such detention centres before their subsequent release, corroborates other reports of the same nature received earlier by the Special Rapporteur. Reports and testimonies further allege that the detained are kept in over-crowded and unsanitary conditions and are subjected to beatings. Various tortures are also said to be practised in detention centres. For example, one witness who admitted to have been an Army deserter claimed that, while in Radwaniyah prison some months before, he had been hit with cables, wires, canes and water hoses in one room, and later subjected to electric shocks administered in another room through his toes and genitals; he also claimed to have been beaten by prison guards.

. As the economic situation has deteriorated, reports and testimonies allege that arbitrary arrests have increased. This is seen to be connected with the parallel increase in the reports of bribes required of persons to obtain release or protection. Bribes in the many thousands of Iraqi dinars, and paid to all levels of Government forces, have been reported.

3. Forced displacement

. Reports indicate that the effect of Government of Iraq actions in the southern marsh area is to force the relocation of the inhabitants from their traditional and ancestral marsh homeland to the urban centres in and around the marshes. In particular, the launching of artillery bombardments, instilling fear among the people and also destroying their homes, is said to have resulted in the displacement of thousands of persons. With the difficulty of securing protection in other marsh settlements, many people have been forced to wander about, hiding among the marshes where possible. Some have reportedly gone to the urban centres, as the alternative of somehow remaining in the marshes has been further reduced by the destruction of the environment: as the waters have declined, movement by boat has apparently become very difficult, and as the quality of water has deteriorated, the ability to subsist through food from available fish and animal stocks, through potable drinking water, and through healthy reeds for hut construction has been severely constrained. The complex of controls effectively denying access to food and health care in the marsh area similarly forces Marsh Arabs to move in an effort to obtain sufficient food and medical supplies and services.

. Testimonies received indicated overwhelmingly that the fundamental impetus for the flight of refugees into Iran this past summer was the drying of the marshes together with a general fear of the governmental authorities. Witnesses claimed that the sometimes incessant bombardments, aside from causing widespread destruction, generated extreme fear among the people. As they moved about the marshes seeking escape or refuge, some people fled to the urban centres where, despite the poverty and generally undesirable lifestyle which would await them and despite the other risks they would confront in arriving as strangers, they would, at least, no longer be subjected to bombardments. Others who were previously reported to have been individually transported by government forces are said to be grouped into controlled sections. The Special Rapporteur notes, however, that those interviewed in south-western Iran did not recount any observation of more organized and direct forced relocation; they simply felt compelled to flee the country.

C. Violations of economic rights

. According to article 2 of the International Covenant on Economic, Social and Cultural Rights, the Government of Iraq is obliged "to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant". Those rights include, inter alia, the rights to "adequate food, clothing and housing" (art. 11) and "the highest attainable standard of physical and mental health" (art. 12).

. In view of the Government of Iraq's obligations to take steps to provide for adequate food, clothing and housing and to achieve the highest standards of physical and mental health, the existence of prohibitions, restrictions and administrative requirements interfering with access constitute violations. Reports and testimonies indicate that such interferences exist and impact the Marsh Arabs in severe ways. For example, access to food rations is extremely limited for them because the system of food rationing employs the use of ration cards, which change periodically and for which recipients must be duly registered. However, this system assumes the prior possession of identification cards which, as noted above, Marsh Arabs find extremely difficult to acquire in a considerable number of cases. Thus, the peculiar situation of the Marsh Arabs coupled with the registration process acts as an interference with their access to basic foodstuffs. In place of food rations, Marsh Arabs are left to acquire their provisions on the open market, which has been inflicted with hyper-inflation. Yet, even should they be able to afford provisions, testimonies allege that Government forces often confiscate acquired goods. Given this additional risk, testimonies further state that many Marsh Arabs became dependent upon smugglers, who brought goods into the marshes at exorbitant prices. However, as the drying of the marshes continued and Government forces improved their control, the inhabitants of the marshes turned more and more to the available natural resources.

. Aside from the difficulties associated with the normal system of rationing, testimonies allege that, for those who previously had access, the Government stopped distributing rations within the marsh villages after the Gulf war of 1991. Instead, the Army is said to have established checkpoints which have the

effect of stopping people from procuring food and other supplies in the towns. Moreover, other conditions on access to food rations within the towns have been reported: one witness claimed that he was refused his rations because he would not join the Army.

. Access to health care is also said to be extremely limited for the Marsh Arab people. As in the case of access to food rations, the problem of identification cards also interferes with access to health care available through the urban medical centres. Since Government doctors reportedly no longer come to the marsh villages, the population is left to its own means. Clandestine and illegal medical services are reportedly offered by individuals and groups operating on a humanitarian basis. Testimony was received from one such individual who claimed that he had spent several months moving in and out of the marshes bringing small amounts of medicines and administering basic medical services to those in need. But, the witness claimed, the needs are far greater than he could possibly serve and, in the absence of care, many people have died.

. In terms of needs, reports and testimonies indicate that malnutrition and disease are widespread within the marsh area. Waterborne diseases such as bilharzia are said to be rampant. The physical condition of the refugees arriving in south-western Iran gave stark credibility to the reported condition of those inside the marshes: of the 5,000 refugees seen at the end of August 1993, doctors reported attending to between 300 and 350 per day with 8 out of 10 patients suffering from amoebic dysentery; several cases of typhoid were also diagnosed each day. It is further to be noted that the extreme heat and humidity during the summer months in the region, reaching 50° Celsius and over 80 per cent humidity, increase the needs for care. Coupled with inadequate food, the effects of disease have been severe, particularly for infants, lactating mothers and the elderly. In this light, the Special Rapporteur was most concerned by the assessment of arriving refugees that they were, in fact, among the strongest and, therefore, most able to flee.

. For those who are able to afford it, a last alternative for medical care can be found on the black market. Persons who need the attention of physicians, including hospitalization, are said to be able to obtain it through the payment of enormous bribes. For example, one witness who was injured in the attack on the wedding at Al-Agar in May 1992 claimed to have paid 10,000 Iraqi dinars for one month's hospitalization. Other witnesses claimed to have paid thousands of dinars to doctors who would come illegally into the marshes.

. Without a doubt, a major contributing cause to the increasing needs of the Marsh Arabs is the loss of their natural resources as the marshes have dried. While attacks on marsh settlements have resulted in the death of livestock, the greater cause of death of fish and animals is attributable to the depletion of water and the deterioration of that which remains. Reports, testimonies and video recordings indicate that the previously clean waters of the marshes have become toxic. This has also resulted in the loss of the Marsh Arabs' source of clean drinking water.

. The precise cause and nature of the toxins in the water is unknown. Reports and testimonies allege that the Government has purposefully poisoned the waters through the introduction of chemicals and other poisons. Some witnesses

claim to have observed the dumping of chemicals, while others recount how governmental authorities encouraged fishermen to pour bottled chemicals into the water, supposedly to improve their catches. However, the Special Rapporteur is much more of the opinion that the reduced waters have become stagnant and also extremely polluted by the huge amounts of industrial and agricultural waste, together with raw sewage, which have been running into the marshes subsequent to the destruction of urban water treatment facilities. In this connection, the Special Rapporteur notes the submission of the Government of Iraq to the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, in which the Government recounts damage caused to the environment through the discharge into surface water and soil of substantial amounts of "various poisonous and dangerous chemical substances" [redacted] discharge resulting, according to the Government, from the destruction of civil installations by Allied bombing during the 1991 Gulf war (A/CONF.157/4, paras. 35-40 and annex I). Whatever the correctness of this explanation, the Special Rapporteur stresses that the Government of Iraq remains obliged to take steps to limit this discharge; compliance with their obligations under Security Council resolutions 687 (1991) and 688 (1991), of 3 and 5 April 1991, respectively, would provide clear means through which the Government could act.

. Irrespective of the cause of the toxins in the depleted marsh waters, the depletion itself has had a major effect on the availability of food and conditions for good health. In this connection, the Special Rapporteur notes that the completion of a series of Government engineering schemes predated the evident depletion. Aside from the immediate effect of reducing flows and, therefore, causing stagnation in large areas, the Special Rapporteur has also received reports, testimonies and photographs indicating that the agricultural region south-east of Amara has experienced significant flooding. Specifically, it has been reported that the farms and date orchards in the areas of Al-Atwaniyah, Al-Bathi, Al-Ea'wij, Al-Ma'il and Al-Haththaliyah were flooded in mid-June of 1993 just at the time of harvest; wheat, barley and rice crops were lost, and date orchards were destroyed.

. Even if one would accept the thesis of the Government of Iraq that it cannot be held responsible for the draining of the marshes (and the Special Rapporteur finds such a position unsustainable for reasons which will be explained below), the Special Rapporteur emphasizes that the Government has apparently failed to respond to the factual situation irrespective of causes. For example, there are said to have been no efforts to ameliorate the situation of the Marsh Arabs. Vaccinations have apparently also not been carried out, although the Government felt it appropriate to ask most humanitarian agencies operating in the south last year to leave. Moreover, testimonies allege that artillery bombardments of marsh villages are not followed by any efforts to assist the injured, innocent or not. Similarly, witnesses allege that there are no efforts to assist victims of mines which have been laid in the waters of the marshes and which may be hit by Marsh Arabs in their daily movements.

D. Violations of social and cultural rights

. In evaluating the situation of human rights in the southern marsh area, the social and cultural rights of the so-called "Marsh Arabs" come to the forefront of discussion. To begin with, it is clear that the Marsh Arabs are not merely a

minority in the sense of article 27 of the International Covenant on Civil and Political Rights or the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Nor do they constitute an ordinary group with rights arising from the International Covenant on Economic, Social and Cultural Rights. To be sure, the Special Rapporteur believes that the Marsh Arabs qualify for the rights and protections just mentioned. However, they seem to be something more: they are a composite of tribally organized persons who share an essential closeness to their natural environment. Moreover, they would seem to constitute an indigenous people entitled to the rights stipulated in article 1 of the Covenant on Economic, Social and Cultural Rights. Above all, however, there remains their intimate relationship with the marshes, which has shaped their social organization and development through millennia. Indeed, the name given to them by outsiders makes the essential point: without the marshes, there can be no "Marsh" Arabs.

. Given that the survival and maintenance of the Marsh Arabs as a distinct social and cultural group requires the existence of the marshes and their continuing freedom to live within the unique environment, the destruction of the marshes holds significant human rights implications for these people. Consequently, the Special Rapporteur views with extreme worry the evidence before him indicating extensive destruction of the marshes.

. The evidence before the Special Rapporteur indicating the physical situation, the composite of reports, testimonies, video recordings and all types of photographs (including aerial and satellite imagery) seem to show the drying of about 40 per cent of the marshes as of August 1993. Testimonies, supported by video recordings, indicate that the "poisoned" or polluted remains of the water have killed significant amounts of the fauna along with large numbers of the valued water buffalo which live so closely with the people. Information also indicates that a significant decline in the water levels occurred this past summer. In addition to the drying of the marshes, the Special Rapporteur also has confirmation of large reed fires detected in dried areas.

. Receipt of the evidence establishing the present physical situation in the area, i.e., the widespread drying, was predated and predicted by reports of large-scale engineering works undertaken by the Government of Iraq over the past two years. Essentially, these reports allege that the drying of the marshes is a deliberate policy objective of the Government of Iraq. In fact, the Government has largely admitted its responsibility in so far as it has advanced the argument that it is free to pursue its domestic development schemes as an independent State. More specifically, the Minister of Agriculture has claimed that the Government objectives for the area are: (a) to wash away salt-encrusted soils; (b) to reclaim land for cultivation; and (c) to increase water available for irrigation. Indeed, plans supplied by the Government of Iraq in order to prove the legitimacy of its water diversion projects - plans dating from the 1950s - foresee large-scale drainage of the marshes for "development" purposes (see A/C.3/47/2, annex, appendix 3).

. In the light of the Government of Iraq's prior defence of its development projects affecting the marshes, the Special Rapporteur finds it most surprising and inconsistent that the Government has recently turned to blaming the Governments of Turkey and the Syrian Arab Republic for the drying of the marshes: "the noticeable paucity of water there [in the marshes] has been

caused by very low water levels in the Euphrates as a result of the construction and operation of the Keban and Karakaya Dams in Turkey and the Tabqah Dam in Syria and owing to the filling of the Atatürk High Dam in Turkey beginning in 1990" (A/48/387-S/26424). However, other information before the Special Rapporteur indicates that the combined effects of the Turkish and Syrian dams may have accounted for a 10 to 15 per cent drop in the levels of water over the last several years. While the Special Rapporteur has noted the Government of Iraq's consistent objection to the construction and operation of the aforementioned dams, the Special Rapporteur is also aware of several concrete actions which the Government has taken relating to the engineering schemes that clearly affect the marshes. Specifically, the Special Rapporteur draws attention to the following acts of the Government of Iraq: (a) the speedy completion of the Third River; (b) the construction of locks and sluice gates at the head of the Tigris River; (c) the construction of levees blocking the flow of numerous tributaries of the Tigris River which fed the Amara Marshes; (d) the construction of lateral embankments running east-west north of the Amara Marshes; (e) the diversion of waters captured as a result of the latter two projects into a super-canal running parallel to and west of the Tigris River, disgorging into the Euphrates River just west of Al-Qurna; (f) the construction of a dam on the Euphrates River east of Nassiriya, diverting the flow of the River into the Third River; and (g) the construction of a canal diverting the waters away from the Euphrates River (and, therefore, the Al-Hammar Marsh) near Samawah.

. In assessing the relative impact of the potential causes of the drying of the marshes, the Special Rapporteur notes that seasonal fluctuations (including, for example, the light winter in the north) must be considered. However, the extent and suddenness of the drying persuades the Special Rapporteur that something (or things) must have had a direct effect. Based on the information available, the Special Rapporteur is further persuaded that the effects of Government actions are at least very significant. Indeed, there are some things which appear overwhelmingly to have been caused by the Government's actions. For example, the actions diverting the flow of the tributaries of the Tigris River from entering the Amara Marshes are clearly the most immediate causes of the depletion of these marshes. Satellite photography definitively shows the diversion of the waters flowing from the streams and tributaries of the Al-Majar River into the enormous canal (at points, 2 kilometres wide) west of the Tigris River. The depletion of the Al-Hammar Marshes south of the Euphrates River can also be linked to the diversion of the Euphrates into the canal built near Samawah and into the Third River as a result of the dam constructed by the Government of Iraq.

. Having established that the Government of Iraq is at least significantly responsible for the drying of the marshes, it becomes important to establish the objectives of the projects and to scrutinize the methods of implementation in order to discover whether or not the Government has respected all the human rights obligations related to the projects. As to the Government's declared objectives, which relate to development, the Special Rapporteur observes, in the first place, that he has not been able to detect any efforts to reclaim the lands for agricultural production or to reuse diverted waters for purposes of irrigation. In fact, the immediate effect of the blocking of the tributaries from the Tigris River was the flooding of large areas of productive farmland exactly at the time of harvest, causing substantial losses. Should the

Government be genuinely interested in achieving its declared objectives, although it is rather unsuccessful at this time, the Special Rapporteur must still report that he is unaware of any effort to plan or implement the projects "with due regard for the legitimate interests of persons belonging to minorities" according to article 5 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities or to consult with the tribal leaders as required by ILO Convention 107, to which Iraq is a party. Nor is there any evidence to suggest that the Government has entered into discussions with the affected persons concerning appropriate compensation.

. In fact, it has been alleged that the true objective of the Government of Iraq is to destroy the physical and social environment which provides a "safe haven" for suspected "criminals", "deserters" or "infiltrators". This allegation is supported by a variety of arguments and evidence. For example, Government engineering plans for the diversion projects were implemented in the course of a military action which aims at the said objective. The considerable speed of construction of the diversion projects also fails to make sense during a period of considerable economic difficulty: why the tremendous rush? More convincing, however, is an analysis of the projects in the context of Iraq's recent military history: the environment has been used before for military purposes. For example, a January 1985 issue of the New Scientist magazine reports that Iraq built a water-filled canal 50 kilometres long x 10 kilometres wide near Basrah in its war with Iran. In 1981, Iraq had used giant pumps to fill an earlier version of the canal; interestingly, testimony received a couple of months ago alleges that huge pumps have been used to move water out of the Al-Hammar Marshes. More recently in Kuwait, Iraqi forces dug oil pits, spilt oil and ignited oil fires while beating a hasty retreat. Yet more convincing is the fact that the physical situation as known at present bears out testimonies and reports predicting completion of exactly such work projects and the resultant drying of the marshes by this summer.

. Without doubt, the Government of Iraq has repeatedly shown no respect for the social or cultural rights of a particular group. History records the Government of Iraq's preparedness to put an end to Kurdish mountain life not long ago. The fact that another group's way of life may be destroyed, or that the largest wetland ecosystem in the Middle East will be lost, seems not to bother the present Government of Iraq. Rather, the Government seems quite prepared to use the drying of the marshes to push ahead with its military forces in destroying the remaining reed-beds and settlements. To avoid responsibility, the Government of Iraq simply obfuscates and prevaricates by blaming others. As a result, the free people who were sustained for millennia by the sweet waters between the Tigris and Euphrates are on the verge of disappearing.

E. Conclusions

52. In studying the situation of human rights in Iraq and, more specifically, in evaluating the compliance of the Government of Iraq with its international obligations, the Special Rapporteur emphasizes that he continues to apply only those standards to which Iraq has voluntarily consented or which apply as matters of international customary law to which Iraq has not consistently objected. The relevant standards have been recounted, and addressed in the

light of any special circumstances, in previous reports of the Special Rapporteur (E/CN.4/1992/31, paras. 18-39, and E/CN.4/1993/45, paras. 23-25).

With respect to the allegations concerning indiscriminate bombardments of civilian settlements in violation of the victims' rights to life and security of person, the Special Rapporteur concludes that the Government of Iraq is responsible for such violations on a large scale. Indeed, the employment of such undiscriminating weapons and techniques to effect a supposed police action against suspected criminals has previously been condemned by the Special Rapporteur, but the continued resort to the tactic, involving specific targeting from ever closer range, amounts to a most egregious violation of the most elemental tenet of international human rights law. Moreover, the failure to distinguish between suspected "criminals", "deserters", "infiltrators" and innocent civilians may be said to reveal a great deal about the Government's general level of respect for its people.

While the Special Rapporteur has not received corroborative substantiation of the allegations concerning "chemical weapons" use, he nevertheless notes that he has received the allegations from several sources. As such, the Special Rapporteur considers that the allegations cannot be dismissed out of hand. Moreover, given the seriousness of the allegations, the Special Rapporteur welcomes the news that the United Nations Special Commission (UNSCOM) established pursuant to Security Council resolution 687 (1991) intends to conduct an investigation. It would be hoped that the Government of Iraq will extend its fullest cooperation in facilitating the prompt conduct of the investigation. However, pending the outcome of UNSCOM's work, and in the absence of further evidence, the Special Rapporteur finds himself unable to draw any conclusions at this time concerning these most serious allegations.

Of course, the seriousness of the allegations concerning "chemical weapons" use, as other allegations pertaining to events in the south, must be viewed in the context of previous events and the previous conduct of the Government of Iraq, such as the terrible Anfal operations launched against the Kurdish population in 1987-1988 (see E/CN.4/1993/45, paras. 89-99). Indeed, given the history of Iraqi forces meting out collective punishments against family members, neighbours of perceived "criminals" or opponents, or against larger communities, the Special Rapporteur does not find it inconsistent to have received allegations that entire marsh villages are being "accused" or that, in effect, the whole marsh area is being collectively punished for harbouring or assisting "criminals" and "deserters" and, essentially, remaining a sanctuary beyond the control of the Government.

In a situation in which entire villages are being brazenly destroyed through indiscriminate bombardment, the Special Rapporteur finds the allegations of widespread arbitrary arrest and detention to be most credible. The demonstrated fear which has driven thousands to flee is also a convincing substantiation of these allegations. Moreover, given the very nature of the forces employed by the Government of Iraq so as "to eliminate the intimidation and criminality" (see letter of 9 September 1993 from the Permanent Representative of Iraq (A/48/387-S/26424)), and given the evident lack of judicial controls on the actions of these forces, the Special Rapporteur concludes that almost any arrest or detention in such circumstances would be arbitrary by definition.

With regard to the forced displacement and relocation of the Marsh Arabs, the Special Rapporteur concludes that the efforts of the Government of Iraq to effect military-type control of the region through extreme and indiscriminate techniques have resulted in the internal displacement of thousands of persons and have caused thousands of others to relocate to urban centres. Thousands more have sought refuge outside the country.

In view of the more direct and more immediately offensive military actions of arbitrary bombardment of villages and arbitrary arrest of persons within the region, the Special Rapporteur does not find it surprising to continue to receive allegations concerning severe restrictions on access to food and health care. The Special Rapporteur concludes that the imposition of a complex of prohibitions, restrictions and requirements effectively denies the marsh dwellers access to food and health care, at least within their indigenous environment. These more indirect means of attacking the population, including the destruction of the environment, clearly breach Government obligations to ensure access, provide a minimum of resources and otherwise attend to the basic needs of the civilian population. Certainly, the failure of the Government of Iraq to take steps in response to evident needs, irrespective of their causes, constitutes a conspicuous omission in violation of international obligations.

In relation to the economic, social and cultural rights of the Marsh Arab people in particular, the Special Rapporteur concludes that the Government of Iraq is significantly responsible for the draining of the marshes, for the deterioration of the quality of remaining waters and, in general, for the destruction of the physical and social environment necessary for the maintenance of the traditional ways of life. Irrespective of any legitimate interests the Government of Iraq may have in the region, either in terms of effecting police actions development projects, the Special Rapporteur concludes that Government policies demonstrate a blatant disregard for the rights and welfare of the indigenous peoples.

In reviewing the situation in the southern marsh area, it becomes clear that the main issue for the Government is its desire for control. This desire seems to overshadow all other concerns. Other factors like, for example, underlying prejudices against the Marsh Arabs appear to contribute something to the creation of Government policies vis-à-vis the area (see E/CN.4/1992/31, para. 126, and A/47/367/Add.1, para. 21). However, the evidently disproportionate use of military forces and means against such a historically peaceable civilian population as the Marsh Arabs indicates that the aim is not only to subdue the "criminals" in the area, but to subdue the whole population through indiscriminate means. The assumption and attribution of political sympathies held by the Marsh Arabs, and the conclusion of guilt by proximity of, or association between, the Marsh Arabs and possible "criminals", "deserters" or "infiltrators", are also indications of an extreme will to repress the whole population. Consequently, and in view of the enormous gaps in the rule of law in Iraq (see, in particular, E/CN.4/1993/45, para. 181), the Special Rapporteur fears for the safety of all those in the area, including women, children and the elderly. In this connection, the very fact that some 5,000 persons (largely women and children) recently fled the area is convincing evidence that the Special Rapporteur's fears are justified.

Over and above the conclusions which the Special Rapporteur has drawn in terms of international human rights law, he observes that the indiscriminate bombardments of civilian settlements, the arbitrary arrest and detention of large numbers of persons, the denial of access to food and health care, and the general destruction of the environment sustaining the traditional ways of life constitute a policy of repression in violation of paragraph 2 of Security Council resolution 688 (1991). In addition, the continuing denial of access to the region by international humanitarian organizations, together with the related refusal to facilitate the operations of such organizations, constitutes a violation of paragraph 3 of that resolution. Further, any proven possession or use of "chemical weapons" on the part of the Government of Iraq would constitute a violation of paragraphs 8 and 10 of Council resolution 687 (1991).

III. THE SITUATION OF ECONOMIC RIGHTS

A. Introduction

The Special Rapporteur has previously addressed the situation of economic rights in each of his reports to the General Assembly and the Commission on Human Rights. In his first reports to the Assembly and the Commission, the Special Rapporteur specifically referred to the issues of access to food and health care (see, respectively, A/46/647, paras. 52-54 and 95-98, and E/CN.4/1992/31, paras. 29, 81-83, 145 (o) and (p), and 158 (4) and (5)). In his second report to the General Assembly, the Special Rapporteur addressed the problem of the denial of access to food and health care in the southern marsh area (A/47/367, part one, paras. 14 and 15) before proceeding to a more comprehensive report on the situation of economic and social rights throughout the country (A/47/367/Add.1, annex). In his last report to the Commission on Human Rights, the Special Rapporteur again addressed the problem of access to food and health care in the country as a general matter (E/CN.4/1993/45, paras. 67-72, 185 and 187 (d) and (e)) and in relation to the specific situations in the southern marsh area (ibid., paras. 127-130 and 187 (d)) and the non-Government-controlled northern Kurdish territory (ibid., paras. 100-104, 112, 184 and 187 (d)).

While it is clear that the Government of Iraq is functioning under considerable constraints resulting from the combined effects of the destruction suffered in the Gulf war of 1991, the subsequent destruction in the suppression of the March 1991 uprisings, and the economic sanctions imposed by the United Nations pursuant to Security Council resolution 661 (1990) of 6 August 1990, the Special Rapporteur has endeavoured to analyse the obligations of the Government. In view of the continuing peculiarities of the economic situation in Iraq and, as noted below, the declining general standards of health and welfare, the Special Rapporteur again finds it necessary to address the situation of economic rights in a specific way at this time.

With respect to applicable standards by which the Special Rapporteur views the situation of human rights in Iraq, reference should to be made to paragraphs 33 and 52 above. In addition, the Special Rapporteur underlines two general obligations arising from the International Covenant on Economic, Social and Cultural Rights, to which Iraq is a State Party: first, the obligation "to take steps, individually and through international assistance and cooperation,

especially economic and techni
as stipulated in article 2, pa the maximum of its available resources",
obligation "to guarantee that 1, of the Covenant; and second, the
be exercised without discrimin ts enunciated in the present Covenant will
language, religion, political any kind as to race, colour, sex,
property, birth or other statu opinion, national or social origin,
the Covenant. tipulated in article 2, paragraph 2, of

B.

uation in general

In so far as the Special
southern marsh area in section ur has addressed the situation in the
situation in the rest of the ce, this section will consider the
necessary to consider the situ In this context, it appears nevertheless
separate subsection since the the northern Kurdish territory in a
situation. ng circumstances present a special

With regard to the countr
not dispute the Government of as a whole, the Special Rapporteur does
deteriorating situation. Figu eports indicating a constantly
Government in the past year re descriptions reported periodically by the
numbers of deaths due to preve mendous and disturbing increases in the
particular, large increases in iseases and treatable illnesses. In
attributable to diarrhoea, pne ant mortality rate and increases in deaths
reported. Reports by or for U diabetes and malnutrition have been
similar deterioration in the g tions agencies, such as UNICEF, report a
publication of the United Nati tandards of health. In addition, a
(UNIAHPI) setting out its coop r-Agency Humanitarian Programme in Iraq
31 March 1994 records the furt programme for 1 April 1993 through
while enumerating a parallel p in living standards over the past year
in the needs of the most vulnerable.

While the statistics offe he Government of Iraq suggest an increase
in the needs of the people, th l Rapporteur cannot help but be struck by
the Government's continuing re take advantage of opportunities to
increase available resources b ugh the possibility of the sale of oil
according to Security Council ons 706 (1991) and 712 (1991) of
15 August and 19 September 199 ectively, and through expanded and improved
relations with international h ian organizations. In this connection,
the Special Rapporteur notes t cording to article 2 of the International
Covenant on Economic, Social a ural Rights, the Government has an
obligation "to take steps ... maximum of its available resources". In
interpreting this particular p the Special Rapporteur refers to the
authoritative General Comment ed by the Committee on Economic, Social
and Cultural Rights at its fi ion in 1990 (E/1991/23 and HRI/GEN/1):

> "10. ... Article 2 (1) ob each State party to take the necessary
> steps 'to the maximum of ilable resources'. In order for a State
> party to be able to attr e failure to meet at least its minimum core
> obligations to a lack of le resources it must demonstrate that every
> effort has been made to esources that are at its disposition in an
> effort to satisfy, as a f priority, those minimum obligations.

"11. The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. ...

"12. Similarly, the Committee underlines the fact that even in times of severe resource constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected ...

"13. ... The Committee notes that the phrase 'to the maximum of its available resources' was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance. ..."

Hence, so long as the Government of Iraq refuses to take the steps to enlarge the resources available to it, and therefore fails to provide those in need, especially the most vulnerable, with adequate food and health care, the Government will be in violation of its obligations. On this specific point, the Special Rapporteur further notes that, according to UNIAHPI, the total requirements for the year 1 April 1993 through 31 March 1994 amount to US$ 465,402,650, while the Government of Iraq may access approximately double this amount for humanitarian purposes simply by taking advantage of Security Council resolutions 706 (1991) and 712 (1991). Inasmuch as UNIAHPI remains underfunded by almost $360,000,000 at this late date, the Government's failure to act because of a perceived injury to its "sovereignty" (see, most recently, the Government's arguments in document A/48/387-S/26424) bears heavily upon those in need and no doubt accounts for a significant portion of the large increases in mortality rates. Similarly, the Government of Iraq's past decision to reduce the international humanitarian assistance available throughout the country, particularly in the south, has no doubt caused considerable and unnecessary suffering and even death to innocent people in need.

At the same time that the Government of Iraq has failed to take steps to enlarge the resources available to it and, therefore, to those in need, it has continued with policies of evident discrimination in violation of article 2, paragraph 2, of the Covenant referred to above. Specifically, the geographic disparities between the pace of reconstruction and availability of rations and other basic needs favours the central part of the country and clearly disfavours the south. Not only has the Government chosen to attend to the needs of the central region over all others, but it has at the same time caused the withdrawal of international humanitarian assistance to the southern region, which is specifically disfavoured. Beyond this basic geographic disparity also remain the clear preferences granted to specific strata of society in the pay of the Government, e.g., the military in general and some divisions in particular.

C. The situation in the northern Kurdish territory

The Special Rapporteur has previously referred to the specific situation of economic rights in the northern Kurdish territory in his report to the Commission on Human Rights at its forty-eighth session (E/CN.4/1992/31,

paras. 104-105), in part two of his interim report to the General Assembly at its forty-seventh session (A/47/367/Add.1, paras. 24-31) and in his last report to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/45, paras. 32-33, 71-72 and 100-105). In each case, the Special Rapporteur has noted the especially difficult situation prevailing as a result of the so-called "double embargo", i.e., the effects of the international sanctions pursuant to Security Council resolution 661 (1990) affecting the whole territory of Iraq combined with the internal economic blockade imposed by the Government of Iraq against the northern territory, from which the Government withdrew its administration in the autumn of 1991 subsequent to popular uprisings and the creation of a "safe haven" guaranteed by foreign and Allied forces. However, in the absence of a continuing or effective occupation of the territory by these foreign forces, the Government's withdrawal has left the predominantly Kurdish population in a peculiar position. Specifically, on the one hand, the Government withdrew its administrative services (including social security and welfare support) on the argument that it was forced out by the foreign occupation, yet on the other hand, the Government argues that it is perfectly justified in restricting economic flows (including essential goods) to the region as a matter of its sovereignty over the territory, thus leaving almost 4 million inhabitants in a most disadvantaged and precarious situation. In this light, the Special Rapporteur felt bound to address the persistent territorial issue in a separate section of his last report to the Commission under the subtitle "The question of sovereignty" (E/CN.4/1993/45, paras. 32 and 33).

As a general matter, the Special Rapporteur observes little significant change in the situation of economic rights in the northern Kurdish territory. Indeed, the people appear ever more vulnerable to the economic and social uncertainties which their precarious situation implies: the collapse of certain basic infrastructure owing to non-repair or interference, or the coming of a harsh winter, would result in considerable suffering including large numbers of deaths. But without further reference to the potential for real calamity in the Kurdish region - a potential which the Special Rapporteur believes the Government is under an obligation to confront and reduce - the Special Rapporteur observes that the following actions of the Government have had a continuing negative effect on the situation of economic rights in the area: continuation of the internal economic blockade; territorial discrimination in the withdrawal of the 25 Iraqi dinar banknote; armed attacks, especially upon agricultural fields and villages; and the still less than full cooperation with the United Nations humanitarian programme.

The most obvious economic action by the Government concerning the northern Kurdish territory remains the internal economic blockade. Aside from the fact that basic social services have been withdrawn, including distribution of income support in the form of pensions, basic trade in goods has been blocked. This has undermined the ability of the population physically to obtain necessities or to trade for them. The blockade applies to virtually everything and makes essentially no humanitarian exceptions. Indeed, its rather ad hoc, although total, nature has not given rise to administrative institutionalization such that any one might "apply" for exceptions on humanitarian grounds. To the contrary, it seems clear that the object of the blockade is to punish collectively those in the region for the relative success of the 1991 uprisings and also to undermine the local government which was elected last year. For example, the extent of food rations made available to those in the region has

been reduced to about 10 per cent of need and is a fraction of what is generally made available to citizens in other parts of the country. Access to health care materials and essential fuel supplies has also been blocked. The latter are of special importance in the northern region, which is susceptible to harsh winters in the snow-covered mountains of Kurdistan. The Special Rapporteur has previously emphasized that such restrictions on fuel essential for heating are inexcusable and seem unconscionable in a country and region which is among the world's richest in this resource.

A particular and extensive problem facing the Dohuk area of the territory, from which the Government has withdrawn, is the cut in electricity supply which began on 5 August 1993. While this has affected much of life in a large part of the Kurdish region since that date, it has particular consequences for the health of the population since water pumping and treatment facilities have been affected, as have been hospitals and other medical centres. Resultant problems with clean drinking water and sewage treatment have created anxieties about the spread of dangerous diseases while the effects on medical centres, including emergency care and the necessary refrigeration of pharmaceutical products, have been to reduce further the ability of local doctors to respond to needs. The Special Rapporteur has learned that, for a long time during hot months, five major hospitals were without water, cooling and sterilization systems or the capacity to perform surgical procedures; these have been somewhat restored through the use of generators subsequently supplied under the United Nations humanitarian programme. Extra pressure was also placed on already limited supplies of vaccines. Deaths were reported specifically related to the cut in electricity. As to the Government of Iraq's responsibility for the electricity problem, the Special Rapporteur notes that, in the third week of September, an expert team examining the power line between the generating facility in the Government-controlled area and the cut-off area of Dohuk found no major fault, and the flow of electricity was restored for some hours on 18 September. While the Special Rapporteur understands that some discussions have been held with the Government of Iraq with a view to restoring the electrical flow, no such restoration has ensued and the added suffering continues as winter approaches.

A second particular problem which confronted those living in the northern Kurdish territory concerns the Government's withdrawal and invalidation of the 25 Iraqi dinar banknote on 5 May 1993. In implementing its withdrawal from circulation, the Government closed its external frontiers and also sealed its internal frontier with the Kurdish region, where the Iraqi dinar remains the official currency. With the exception of the Kurdish region, therefore, Iraqis in the country were given the opportunity to exchange their old 25 Iraqi dinar notes. As a consequence of this territorial discrimination, it has been estimated that those living in the Kurdish region (including the local Kurdish government) lost about one half of their wealth held in Iraqi currency, as they were afforded no alternative means of exchanging their banknotes. Thus, already enduring the severe effects of the "double embargo", inhabitants of the region lost even more of their ability to survive because their ability to trade was further curtailed.

Another obvious interference with access to food in the region has been the continuing armed attacks in and on the region. These attacks, often in the form of artillery shellings of agricultural fields and settlements along the internal frontier, have kept some farmers from their fields and have also destroyed

planted crops. Attacks during the harvest of May 1993 caused the displacement of hundreds of persons from villages and hamlets in cereal-growing areas; in one instance, on 21 May 1993, Iraqi artillery attacked a farmer driving his combine harvester.

It has been alleged that the aim of Government actions concerning the northern Kurdish region is to bring the economy to a standstill, to increase the threat of a harsh winter, and generally to add to the political instability of the region. More specifically, it has been alleged that Government of Iraq agents have been conducting covert operations in the area. Certainly, insecurity in the region has been growing as incidents of a security nature have increased, especially in recent months. Incidents include: clashes between Government and non-government forces along the internal frontier; explosions caused by rocket-propelled grenades, hand-grenades, time bombs and other devices; assassinations of local politicians; attacks, including assassinations, on national and international humanitarian workers; firearm attacks against persons and property; and the vandalism of the property of international humanitarian organizations, including the United Nations. As a result, many persons have been injured and some have been killed. For example, on 22 March 1993, Vincent Tollet (a Belgian national who had been leading the humanitarian work of Handicap International) was shot and killed while driving in Sulaymaniyah. It is to be noted that, following this incident, several international non-governmental humanitarian organizations left the region on the grounds of insufficient security.

It would be wrong to attribute all violent incidents that have been taking place in the Kurdish area during the past year to the activities of Iraqi agents. But, on the other hand, there have been many incidents exhibiting strong indications of Iraqi Government involvement. For instance, various persons have been caught in the course of attacks, including attaching time-bombs to vehicles. Some have claimed that they have been paid large amounts of money by Iraqi Security forces to carry out such acts of sabotage.

In relations with the United Nations humanitarian programme for Iraq, the Government has recently demonstrated a more forthcoming attitude, particularly with respect to its agreement to the sale of fuel supplies which the United Nations estimates would be sufficient for essential needs this winter. However, such agreements have been generally a long time in coming, cumbersome in achieving, and sometimes difficult to implement: the Special Rapporteur hopes that no difficulties will interfere with the purchase or delivery of the fuel to the northern region. In this connection, the Special Rapporteur notes Government delays in the past year concerning, inter alia, the issuance of visas and/or travel permits and the purchase of operational fuel sufficient to carry out programmes agreed upon earlier. United Nations personnel still report harassments, including searches of their persons and belongings in violation of their immunities. Further, the Government of Iraq still has not made its financial contributions (in Iraqi dinars) to the functioning of the programme, as it agreed to do in previous memorandums of understanding with the United Nations.

In summary, the Special Rapporteur remains particularly concerned about the security of the basic economic needs of the people of the northern Kurdish territory. As winter approaches, the hundreds of thousands who have been

identified as particularly vulnerable (including unsupported orphans, single mothers and elderly persons) live in danger. Government policies effectively denying or interfering with the economic rights of these people offend the most fundamental of humanitarian values.

D. Conclusions

With respect to applicable standards, the Special Rapporteur refers as a general matter to paragraph 52. In terms of standards more specifically concerning economic rights, he refers, inter alia, to the obligations of Iraq arising from articles 2, 9, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

The Special Rapporteur concludes that the Government of Iraq has violated its obligations regarding economic rights both by its actions and omissions. Regarding the former, the Government has acted in a discriminatory fashion in its distribution of food and health care to the benefit of certain strata throughout the country and to the detriment of the human rights of the general populations living in the northern and southern parts of the country. Likewise, the discriminatory exclusion of the inhabitants of the northern Kurdish region from exchanging their 25 Iraqi dinar banknotes constitutes a violation in so far as it further undermines the ability of the people to obtain sufficient food and health related resources. In denying or restricting access to adequate food, heating, fuel and health care, the Government is also in violation of its obligations under articles 11 and 12 of the above-mentioned Covenant. Moreover, the Government of Iraq is in violation of its obligations "to take steps" according to article 2, paragraph 1, of the same Covenant inasmuch as the Government has failed to act to enlarge the resources available to it to attend to the needs of the people and also failed to act in extending its fullest cooperation to international humanitarian organizations.

Over and above the conclusions which the Special Rapporteur has drawn in terms of international human rights law, the Special Rapporteur observes that the indiscriminate bombardments of agricultural fields and communities, the continuing internal economic embargo, the continuing harassment of civilians crossing the internal frontier, and governmental activities aimed at undermining the security of the population in the unadministered territory constitutes a policy of repression in violation of paragraph 2 of Security Council resolution 688 (1991). In addition, the continuing difficulties in facilitating the humanitarian work of international organizations in the country through, for example, restricting access to sufficient operational fuel requirements constitutes a violation of paragraph 3 of resolution 688 (1991).

IV. RECOMMENDATIONS

Upon consideration of the above, and especially referring to his conclusions in sections II and III, the Special Rapporteur recommends that:

(a) The Government of Iraq immediately cease its military activities of all kinds effected against the civilian population in the southern marsh area;

(b) The Government of Iraq allow immediate and unconditional stationing of human rights monitors throughout the country, especially the southern marsh area;

(c) The Government of Iraq fully cooperate in facilitating an investigation to be conducted by the United Nations Special Commission established pursuant to Security Council resolution 687 (1991) concerning the allegations of "chemical weapons" use in southern Iraq;

(d) The Government of Iraq immediately cease or reverse any actions which may cause irreparable damage to the southern marsh environment and immediately allow access to an independent scientific team to conduct a comprehensive environmental assessment concerning the exact causes and effects of the draining of the southern marshes, especially as regards the consequences for human rights;

(e) The Government of Iraq immediately enter into discussions with the tribal peoples of the southern marsh area with a view to securing their economic, social and cultural rights and establishing appropriate compensation for any damage to their ancestral homeland and way of life;

(f) The Government of Iraq immediately allow unhindered access of United Nations humanitarian agencies throughout the country, but particularly the southern marsh area;

(g) The Government of Iraq immediately act to remove any and all interferences, including proclaimed or de facto internal embargoes, with the fair and equitable access of the whole population to those foodstuffs, medical supplies and essential resources available to the country;

(h) The Government of Iraq immediately cease its artillery shelling of farms and communities in the northern Kurdish territory and cease its harassment of civilians crossing the internal frontier between the Government-administered and unadministered territories;

(i) The Government of Iraq immediately make all outstanding payments due to, and cooperate in the provision of operational fuel for, the United Nations humanitarian programme in Iraq;

(j) The Government of Iraq immediately act to take advantage of the food and medical resources to be made available to the people of Iraq through implementation of Security Council resolutions 706 (1991) and 712 (1991).